

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1744 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAKKUMAR PRAHLADBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR DS NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of Decision 5/05/98

ORAL JUDGEMENT

#. In this writ petition under Article 226 of the Constitution of India, the prayer is for issuing writ of mandamus directing the respondents to quash and set aside the merit list prepared by the respondents considering the petitioner as ineligible for placement in merit list 1.1. He made further prayer that the respondents be

directed to consider the petitioner for admission under Rule-4 and petitioner be considered in the merit list No.1.1 according to his merits.

#. The brief facts are that the petitioner passed his M.B.B.S course of the final year on 31st December,1994. He had undergone 1 year's internship after passing the said examination. Internship was started on 16th January,1995 and it was successfully completed on 15-1-1996. According to the petitioner, the term of post graduate course begins from 1st January and 1st July every year. The term commencing on 1st January is known as regular batch and second term is known as repeat batch or minor batch. The petitioner applied for admission to post graduate course. Due to agitation of students and pending litigation, admission to post graduate course could begin in June,1996 and not in January,1996. Admission was completed in June,1996. The petitioner was offered admission in non clinical branch but he didn't accept it. According to him, the candidates who were given admission in clinical branches had merits lower than him and as such he was entitled to be placed in list 1.1 contemplated under the Rules for admission to post graduate degree and diploma medical course. According to the petitioner, he was entitled to preference as provided under Rule-4.1 of the Rules. This rule provides that the preference shall be given to the candidates of not more than 1 year standing after completion of internship / housemanship graduating from this university. Rule 4.2 on the other hand provides that the candidates who have completed internship more than 1 year would be considered after the merit list prepared under Rule 4.1.

#. The grievance of the petitioner is that his name was wrongly shown at Sr.No.233 in the list 2.1 prepared under Rule-4.2. According to him he should have been considered under Rule-4.1 and preference should have been given to him. Thus, the petitioner in short challenges that he was wrongly placed in second list known as list 2.1 prepared under Rule-4.2.

#. A short counter-affidavit was filed by Dr.S.C. Kukreti, Director of Post Graduate Studies of B.J.Medical College, Ahmedabad, in which it is admitted that the petitioner completed his internship in January,1996 and he was eligible for admission to post graduate course commencing from January,1996. The petitioner applied for admission in January,1996 but no admission could be granted in January,1996 because of agitation of students and pendency of matter in the court. 75 % seats

available for admission in January,1996 were made available in July,1996. Thus in July,1996 100 % seats were made available for admission to academic year 1996 and the petitioner was shown at Sr.No.355 on merit. He was offered admission but he declined vide Annexure-A to the counter-affidavit. It is further stated in the counter-affidavit that the petitioner applied for admission for the year commencing from January,1997 and since he had completed more than 1 year of internship, he was not entitled to preference under R-4.1. It is also stated that interview for the post graduate courses beginning from January,1997 had already been held on 25th & 26th January,1997 hence no relief can be granted to the petitioner.

#. In identical matter in Special Civil Application No.995/97, this court on 18th February,1997 refused to grant any relief to the petitioner whose claim was identical to the petitioner of this case.

#. From what has been stated above, it follows that benefit of R-4.1 could be given to a candidate of not more than 1 year standing after completion of internship. For this, cut off date has to be chosen. It has come that the date of the interview is cut off date and this has been the practice prevailing in the medical college for admission to post graduate course since several years. The selection of this cut off date namely the date of interview cannot be said to be arbitrary or illegal. Likewise if the interview could not be held in January,1996 because of pending litigation and agitation of the students, the medical college teaching staff is not to be blamed if the admission for the whole academic year was considered in the second term commencing from July,1996. Obviously on the date of the interview, the petitioner had completed more than 1 year standing after the completion of his internship. Consequently, he was not entitled to the benefit of Rule-4.1.

#. It may be also mentioned that from the counter affidavit it is clear that the petitioner was offered admission in post graduate course in non clinical branch but vide Annexure-A to the counter-affidavit, he refused to accept on the ground that it was not of his liking. He insisted upon to get admission in clinical branch. For that unless benefit of Rule-4.1 was given to him, he could not be considered for admission to clinical branch. Since he was not entitled to preference under R-4.1, his merit list was correctly prepared and there is no reason to quash and set aside the said merit list or to direct the respondents to quash or set aside the said merit list

nor there is any reason for issuing direction to the respondents to consider the case of the petitioner for admission to post graduate course clinical for the year 1996. Such retrospective admission cannot be ordered by this court.

#. For the reasons given above, there is no merit in this petition which is liable to be dismissed and is hereby dismissed. No order as to costs.

(KPP)